

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: La Malfa Analyst: Nicole Kwon Bill Number: AB 18
Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 12-06-2004
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/Shasta County Wildfires

SUMMARY

This bill would allow taxpayers special tax treatment, called disaster loss treatment, for losses sustained as a result of the Shasta County wildfires.

PURPOSE OF THE BILL

It appears that the purpose of the bill is to provide immediate tax relief to individuals and businesses affected by the Shasta County wildfires.

EFFECTIVE/OPERATIVE DATE

This bill is an urgency measure. It would be effective and operative immediately upon enactment.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under federal and state law, a disaster loss occurs when property is destroyed as a result of a fire, storm, flood, or other natural event in an area proclaimed to be a disaster by the President of the United States or, for state law purposes, by the Governor.

Under federal and state tax law, the taxpayer may elect to claim the loss either in the year the loss occurs or in the year preceding the loss. This election allows the taxpayer to file an amended return immediately for the prior year. For state purposes, this election may be made for any President-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal law. The election is not available for Governor-only declared disaster until enabling legislation has been enacted.

Nonbusiness disaster losses not reimbursed by insurance or otherwise are deductible under state and federal tax law to the extent each loss exceeds \$100. Total nonbusiness disaster losses are deductible only to the extent that the total loss amount for the year exceeds 10% of adjusted gross income.

Board Position:

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Department Director

Date

Lynette Iwafuchi for Gerald H. 1/31/05
Goldberg

State tax law identifies specific events as disasters that are then allowed additional special carry forward treatment. That is, 100% of the excess disaster loss may be carried over for up to five taxable years, and if any excess loss remains after the five-year period, the remaining excess loss may be carried over at a specified percentage for up to 10 additional years.

THIS BILL

This bill would add the wildfires that occurred in Shasta County in August of 2004 to the current list of specified disasters under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL).

Specifically, this bill would allow special disaster treatment of losses sustained as a result of those disasters. The \$100 and 10% of adjusted gross income limitations in existing law would apply to disaster losses on nonbusiness property.

IMPLEMENTATION CONSIDERATIONS

Once the technical consideration is resolved, implementing this bill would not significantly impact the department's programs and operations.

TECHNICAL CONSIDERATIONS

For consistency with other disaster provisions, the author may wish to remove the term "and continuing" on page 6, lines 21-22 and on page 9, lines 25-26, and replace it with "any other related casualties" to identify other events that were connected to and occurred as a result of the wildfires.

LEGISLATIVE HISTORY

AB 1510 (Kehoe, Ch. 772, Stat. 2004) allows taxpayers disaster loss treatment for losses sustained as a result of the following disasters: Middle River levee break in San Joaquin County, Southern California wildfires, floods, mudflows, and debris flows directly related to the Southern California wildfires, and San Simeon earthquake.

AB 44 (Wiggins, Stat. 2001, Ch. 618) allowed taxpayers disaster loss tax treatment for losses sustained as a result of the earthquake that occurred September 2000 in Napa, California.

PROGRAM BACKGROUND

On August 23, 2004, the Shasta County wildfires were proclaimed to be a disaster by Governor Schwarzenegger; President Bush did not declare this fire to be a federal disaster.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact AB 18 – 2004 Shasta County Wildfires Fiscal Year Impact		
2005-06	2006-07	2007-08
Insignificant	Insignificant	Insignificant

Insignificant = Loss of less than \$150,000

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

Total property damages attributable to the 2004 Shasta Fires are estimated at \$10.5 million. Ninety-nine percent is attributable to residential property losses, resulting in approximately \$10.4 million in losses for personal income tax (PIT) taxpayers.

Of the \$10.4 million in total PIT losses, it is estimated that basis limitations will reduce those losses for tax purposes by 3% to \$10.1million ($\$10.4 \text{ million} \times 97\% = \10.1 million).

It is estimated that 90% of residential losses are insured. Therefore, uninsured losses are \$1.01 million ($10.1\text{million} \times 10\% = \1.01 million). Qualifying losses must further be reduced to reflect AGI limitations. Assuming a 3% reduction to reflect this limitation reduces the applicable losses to \$970,000 ($\$1.01 \text{ mil.} \times 97\% = \$970,000$).

Total losses of \$970,000 may be used in the year prior to the disaster, the year of the disaster, or the future year as a carry forward. It is estimated that 30% will be used during the year of the disaster and 5% will never be utilized. The other 65%, \$630,000 ($\$970,000 \times 65\%$), will be carried forward and allowed for use in future years. Assuming an average marginal tax rate of 6%, this proposal's revenue loss of approximately \$38,000 is deemed insignificant ($\$630,000 \times 6\% = \$38,000$).

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